

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
LEXINGTON INSURANCE COMPANY and  
TRAVELERS PROPERTY CASUALTY COMPANY OF  
AMERICA as subrogees of Jones Lang  
LaSalle Management Services, Inc.,

Plaintiffs,

-against-

LOCHINVAR CORPORATION, AMBASSADOR  
CONSTRUCTION CO., INC., F. DIGIACOMO & SONS,  
INC., S. DIGIACOMO & SON, INC. and MANHATTAN  
MECHANICAL SERVICE, INC.

Defendants  
-----X

Case No.: 07 CV 9737  
(GBD)(THK)

**ANSWER TO COMPLAINT  
WITH CROSS-CLAIMS**

**JURY TRIAL DEMANDED**

Defendant **S. DiGiacomo & Son, Inc.**, by its attorneys, FRENCH & RAFTER, LLP, as and  
for its Answer to the Verified Complaint, alleges as follows:

**Background**

1. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "1", and refers to the Complaint for the allegations contained therein.
2. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "2".
3. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph designated "3" and denies Defendant S. DiGiacomo & Son, Inc. improperly manufactured, designed or installed the coupling alleged to have failed.

4. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "4", and refers to the Complaint for the allegations contained therein.

#### **Jurisdiction and Venue**

5. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs designated "5" and "6", and respectfully refers all questions of law to the Court.

#### **The Parties**

6. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs designated "7", "8", "9", "10", and "11".

7. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph designated "12" and respectfully refers all questions of law to the Court.

8. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs designated "13", and "14".

9. Denies the allegations contained in paragraph designated "15" that defendants F. DiGiacomo & Son, Inc. and S. DiGiacomo & Son, Inc. are affiliates, denies having knowledge or information sufficient to form a belief as to the as to the corporate status of defendant F. DiGiacomo & Son, Inc., and admits that defendant S. DiGiacomo is a corporation duly organized under the laws of the State of New York but denies its principal place of business is Eastchester, New York.

10. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "16".

11. Denies having knowledge or information sufficient to form a belief as to the as to the truth of the allegations contained in paragraphs designated "17", "18", "19", "20", and "21".

12. Denies having knowledge or information sufficient to form a belief as to the as to the truth of the allegations contained in paragraphs designated "22", and refers to the relevant agreements for the terms and conditions contained therein.

13. Denies having knowledge or information sufficient to form a belief as to the as to the truth of the allegations contained in paragraphs designated "23" and "24".

**AS AND FOR A RESPONSE TO THE FIRST CAUSE OF ACTION**

14. Defendant repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs designated "1" through "24" as though fully set forth herein at length in response to paragraph designated "25".

15. Denies having knowledge or information sufficient to form a belief as to the as to the truth of the allegations contained in paragraphs designated "26", "27", and "28".

16. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph designated "29", and respectfully refers all questions of law to the Court.

**AS AND FOR A RESPONSE TO THE SECOND CAUSE OF ACTION**

17. Defendant repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs designated "1" through "29" as though fully set forth herein at length in response to paragraph designated "30".

18. Denies having knowledge or information sufficient to form a belief as to the as to the truth of the allegations contained in paragraphs designated "31" "32", "33", "34".

19. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph designated "35", and respectfully refers all questions of law to the Court.

**AS AND FOR A RESPONSE TO THE THIRD CAUSE OF ACTION**

20. Defendant repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs designated "1" through "35" as though fully set forth herein at length in response to paragraph designated "36".

21. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph designated "37", and respectfully refers all questions of law to the Court.

22. Denies the allegations contained in paragraph designated "38", and "39".

23. Denies the allegations contained in paragraph designated "40" and respectfully refers all questions of law to the Court.

**AS AND FOR A FIRST, SEPARATE AND  
DISTINCT AFFIRMATIVE DEFENSE, THIS  
ANSWERING DEFENDANT ALLEGES AS FOLLOWS**

24. That this action is barred and/or limited by reason of the expiration of the applicable statute of limitations.

**AS AND FOR A SECOND, SEPARATE AND  
DISTINCT AFFIRMATIVE DEFENSE, THIS  
ANSWERING DEFENDANT ALLEGES AS FOLLOWS**

25. That the damages allegedly suffered by the Plaintiffs were caused in whole or in part by the culpable conduct of the Plaintiffs themselves, and the Plaintiffs' claims are therefore barred or diminished in the proportion that such culpable conduct of the Plaintiffs bears to the total culpable conduct causing the damages.

**AS AND FOR A THIRD, SEPARATE AND  
DISTINCT AFFIRMATIVE DEFENSE, THIS  
ANSWERING DEFENDANT ALLEGES AS FOLLOWS**

26. Upon information and belief, in the event that a judgment is rendered against this answering Defendant, it shall not be responsible for more than its proportionate share of liability pursuant to Section 1601, *et. seq.* of the CPLR.

**AS AND FOR A FOURTH, SEPARATE AND  
DISTINCT AFFIRMATIVE DEFENSE, THIS  
ANSWERING DEFENDANT ALLEGES AS FOLLOWS**

27. That any and all expenses and economic losses incurred by the Plaintiffs have been or will be paid to the Plaintiffs by a collateral source as defined in CPLR §4545(c), and, as such, these answering Defendants are, as a matter of law, not required to indemnify the Plaintiffs, and consequently, the Plaintiffs' claims are therefore extinguished or diminished.

**AS AND FOR A FIFTH, SEPARATE AND  
DISTINCT AFFIRMATIVE DEFENSE, THIS  
ANSWERING DEFENDANT ALLEGES AS FOLLOWS**

28. That any damages sustained by Plaintiffs were caused by third parties over whom this answering Defendant exercised no control and/or right of control.

**AS AND FOR A SIXTH, SEPARATE AND  
DISTINCT AFFIRMATIVE DEFENSE, THIS  
ANSWERING DEFENDANT ALLEGES AS FOLLOWS**

29. That the Plaintiffs have failed to mitigate damages.

**AS AND FOR A FIRST CROSS-CLAIM AGAINST  
CO-DEFENDANTS LOCHINVAR CORPORATION,  
AMBASSADOR CONSTRUCTION CO., INC., F. DIGIACOMO,  
AND MANHATTAN MECHANICAL SERVICE, INC.,  
THIS ANSWERING DEFENDANT ALLEGES AS FOLLOWS**

30. That if Plaintiffs sustained the damages in the manner and at the time and place alleged, and if it is found that the answering Defendant, **S. DiGiacomo & Son, Inc.** is liable to Plaintiffs herein, all of which is specifically denied, then said answering Defendant, on the basis of apportionment of responsibility for the alleged occurrence, is entitled to contribution from Co-Defendants, Lochinvar Corporation, Ambassador Construction Co., Inc., F. DiGiacomo, and Manhattan Mechanical Service, Inc., for any verdict or judgment that Plaintiffs may recover against the answering Defendant.

**AS AND FOR A SECOND CROSS-CLAIM AGAINST CO-DEFENDANTS  
CO-DEFENDANTS LOCHINVAR CORPORATION,  
AMBASSADOR CONSTRUCTION CO., INC., F. DIGIACOMO,  
AND MANHATTAN MECHANICAL SERVICE, INC.,  
THIS ANSWERING DEFENDANT ALLEGES AS FOLLOWS**

31. That if Plaintiffs sustained the damages in the manner and at the time and place alleged, and if it is found that the answering Defendant, **S. DiGiacomo & Son, Inc.** is liable herein, all of which is specifically denied, then said answering Defendant, on the basis of common-law indemnification, is entitled to indemnification from and judgment over and against Co-Defendants, - Lochinvar Corporation, Ambassador Construction Co., Inc., F. DiGiacomo, and Manhattan Mechanical Service, Inc., for any verdict or judgment that may be recovered against the answering Defendant.


**WHEREFORE**, Defendant **S. DiGiacomo & Son, Inc.** demands judgment dismissing Plaintiffs' Complaint against it, and further demands that in the event said answering Defendant is found liable to Plaintiffs herein, then said answering Defendant on the basis of apportionment of responsibility and/or the basis of common law indemnification has judgment over and against Co-Defendants, Lochinvar Corporation, Ambassador Construction Co., Inc., F. DiGiacomo, and

Manhattan Mechanical Service, Inc., for all or part of any verdict or judgment against said answering Defendant, together with the costs and disbursements of this action.

Dated: New York, New York  
April 23, 2008

Yours, etc.  
FRENCH & RAFTER, LLP

BY:

  
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